

§ 310.51

32 CFR Ch. I (7–1–98 Edition)

which it should actually be filed will govern.

[51 FR 2364, Jan. 16, 1986. Redesignated at 56 FR 55631, Oct. 29, 1991, as amended at 56 FR 57800, Nov. 14, 1991]

§ 310.51 General exemptions.

(a) *Use of the general exemptions.* (1) No DoD Component is authorized to claim the exemption for records maintained by the Central Intelligence Agency established by 5 U.S.C. 552a(j)(1) of the Privacy Act.

(2) The general exemption established by 5 U.S.C. 552a(j)(2) of the Privacy Act may be claimed to protect investigative records created and maintained by law-enforcement activities of a DoD Component.

(3) To qualify for the (j)(2) exemption, the system of records must be maintained by an element that performs as its principal function enforcement of the criminal law, such as U.S. Army Criminal Investigation Command (CIDC), Naval Investigative Service (NIS), the Air Force Office of Special Investigations (AFOSI), and military police activities. Law enforcement includes police efforts to detect, prevent, control, or reduce crime, to apprehend or identify criminals; and the activities of correction, probation, pardon, or parole authorities.

(4) Information that may be protected under the (j)(2) exemption include:

(i) Records compiled for the purpose of identifying criminal offenders and alleged offenders consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, parole, and probation status (so-called criminal history records);

(ii) Reports and other records compiled during criminal investigations, to include supporting documentation.

(iii) Other records compiled at any stage of the criminal law enforcement process from arrest or indictment through the final release from parole supervision, such as presentence and parole reports.

(5) The (j)(2) exemption does not apply to:

(i) Investigative records prepared or maintained by activities without pri-

mary law-enforcement missions. It may not be claimed by any activity that does not have law enforcement as its principal function.

(ii) Investigative records compiled by any activity concerning employee suitability, eligibility, qualification, or for individual access to classified material regardless of the principal mission of the compiling DoD Component.

(6) The (j)(2) exemption claimed by the law-enforcement activity will not protect investigative records that are incorporated into the record system of a nonlaw enforcement activity or into nonexempt systems of records (see paragraph (f)(2) of § 310.50). Therefore, all system managers are cautioned to comply with the various regulations prohibiting or limiting the incorporation of investigatory records into system of records other than those maintained by law-enforcement activities.

(b) *Access to records for which a (j)(2) exemption is claimed.* Access to investigative records in the hands of a law-enforcement activity or temporarily in the hands of a military commander or other criminal adjudicative activity shall be processed under 32 CFR part 286, The DoD Freedom of Information Act Program, provided that the system of records from which the file originated is a law enforcement record system that has been exempted from the access provisions of this part (see paragraph (h) of § 310.30, subpart D).

[51 FR 2364, Jan. 16, 1986. Redesignated at 56 FR 55631, Oct. 29, 1991, as amended at 56 FR 57800, Nov. 14, 1991]

§ 310.52 Specific exemptions.

(a) *Use of the specific exemptions.* The specific exemptions permit certain categories of records to be exempted from certain specific provisions of the Privacy Act (see appendix D). To establish a specific exemption, the records must meet the following criteria (parenthetical references are to the appropriate subsection of the Privacy Act (5 U.S.C. 552a(k)):

(1) *The (k)(1).* Information specifically authorized to be classified under the DoD Information Security Program Regulation, 32 CFR part 159. (see also paragraph (c) of this section).

(2) *The (k)(2)*. Investigatory information compiled for law-enforcement purposes by nonlaw enforcement activities and which is not within the scope of § 310.51(a). If an individual is denied any right, privilege or benefit that he or she is otherwise entitled by federal law or for which he or she would otherwise be eligible as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. This subsection when claimed allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(3) *The (k)(3)*. Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506.

(4) *The (k)(4)*. Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8.

(5) *The (k)(5)*. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information, but only to the extent such material would reveal the identity of a confidential source. This provision allows protection of confidential sources used in background investigations, employment inquiries, and similar inquiries that are for personnel screening to determine suitability, eligibility, or qualifications.

(6) *The (k)(6)*. Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal or military service, if the disclosure would compromise the objectivity or fairness of the test or examination process.

(7) *The (k)(7)*. Evaluation material used to determine potential for promotion in the Military Services, but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(b) *Promises of confidentiality*. (1) Only the identity of sources that have been given an express promise of confidentiality may be protected from disclosure under paragraphs (a)(2), (5) and (7) of this section. However, the identity of sources who were given implied promises of confidentiality in inquiries conducted before September 27, 1975, may also be protected from disclosure.

(2) Ensure that promises of confidentiality are used on a limited basis in day-to-day operations. Establish appropriate procedures and identify fully those categories of individuals who may make such promises. Promises of confidentiality shall be made only when they are essential to obtain the information sought.

(c) *Access to records for which specific exemptions are claimed*. Deny the individual access only to those portions of the records for which the claimed exemption applies.

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Subpart G—Publication Requirements

§ 310.60 Federal Register publication.

(a) *What must be published in the FEDERAL REGISTER*. (1) Three types of documents relating to the Privacy Program must be published in the FEDERAL REGISTER:

(i) DoD Component Privacy Program rules;

(ii) Component exemption rules; and

(iii) System notices.

(2) See DoD 5025.1-M, "Directives Systems Procedures," and DoD Directive 5400.9, (32 CFR part 296) "Publication of Proposed and Adopted Regulations Affecting the Public" for information pertaining to the preparation of documents for publication in the FEDERAL REGISTER.

(b) *The effect of publication in the FEDERAL REGISTER*. Publication of a document in the FEDERAL REGISTER constitutes official public notice of the existence and content of the document.

(c) *DoD Component rules*. (1) Component Privacy Program procedures and Component exemption rules are subject to the rulemaking procedures prescribed in 32 CFR part 296.